

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

GARY W. SAYRE,

Plaintiff,

v.

CIVIL ACTION NO. 5:04-0333

FMRS MENTAL HEALTH COUNCIL, INC.,

Defendant.

MEMORANDUM OPINION AND ORDER

This action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and has recommended that the court grant FMRS's Motion for Summary Judgment (Docket 62) and deny Plaintiff's Motion for Summary Judgment (Docket 65). The plaintiff timely filed objections to the magistrates findings of fact and recommendations. The court has reviewed *de novo* those portions of the Magistrate Judge's *Findings and Recommendation* to which the plaintiff objects.

The plaintiff only objects to the Magistrate Judge's finding that the defendant had a legitimate, non-discriminatory reason for the plaintiff's termination. The plaintiff claims the reason stated for his termination is not a legitimate, non-discriminatory reason. As a result, the plaintiff claims the Magistrate Judge erred in finding that age and gender discrimination did not occur as a matter of law.

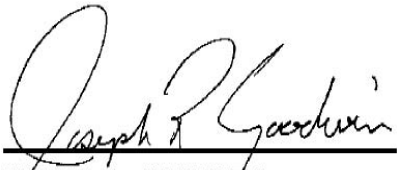
The defendant's reason for terminating the plaintiff was because the plaintiff engaged in an unauthorized conversation with a client about the legalization of marijuana on his first day at work. In this conversation, the plaintiff indicated that proponents advocating for the legalization of marijuana had some valid arguments. FMRS claims that it decided to terminate the plaintiff because the plaintiff was hired as a "Substance Abuse Therapist," and it determined his statements would hinder clients in their ability to remain substance free.

The plaintiff claims that this reason for terminating him is not "a legitimate, non-discriminatory" reason. I disagree. FMRS has an interest in ensuring that its therapists do not undermine its efforts to help substance abusers recover from their addiction. It is reasonable for FMRS to conclude that a therapist with the plaintiff's views might be detrimental to its purpose if the plaintiff continued to express his views to FMRS's clients. As a result, FMRS may choose to terminate the plaintiff, an "at will" employee, because it views his conduct as detrimental to its cause. Agreeing with the Magistrate Judge, the court **FINDS** FMRS's reason for terminating the plaintiff is "a legitimate, non-discriminatory" reason.

Therefore, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and orders judgment consistent with the findings and recommendations. The court **GRANTS** the defendant's motion for summary judgment, **DENIES** the plaintiff's motion for summary judgment and **DISMISSES** the case from the active docket.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: July 10, 2006



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE